GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT.

Labour Dispute.—Industrial Dispute between the Workmen and the Management of Udipi Sri Krishna Bhavan, Restaurant Hampankatta Mangalore.

Award of the Labour Court, Mangalore—Published.

Read the following papers :

(1) Letter No. A/ID/46/70/71-72, dated 11th May 1971 from Shri Mohd. Hameeduddin Khan, Presiding Officer, Labour Court, Mangalore.

BEFORE THE LABOUR COURT AT MANGALORE.

11th May 1971.

Reference (ID) (LCM) No. 46 of 1970.

Present :

Mohd. Hameeduddin Khan, B. SC., LL. B., ... *Presiding Officer.*

Between :—

The workmen represented by the Secretary, Hotel Mazdoor Sabha, Felix Pai Bazaar, Mangalore-1.

... *I Party.*

and

The management of Udipi Sri Krishna Bhavan Restaurant, Hampankatta, Mangalore-1.

... *II Party.*

The Government of Mysore being of opinion that an industrial dispute exists between the workmen and the management of Udipi Sri Krishna Bhavan Restaurant, Hampankatta, Mangalore-1 referred it under Section 10(1)(c) of the Industrial Disputes Act, 1947 *vide* Order No. FCL 631 LLD 70, dated 8th December 1970 to this Labour Court at Mangalore for adjudication on the following points of dispute :—

"I. Are the management of Udipi Sri Krishna Bhavan, Mangalore, justified in terminating the services of Sri P. Sanjeeva, with effect from 30th May 1970 ?

II If not, to what relief is the said workman entitled?"

2. On receipt of the reference it was registered as Reference (ID) (LCM) No. 46 of 1970 on the file of this Court, and notices were issued to both the parties to file their claim and counter statements. The first party was represented by Sri C. Govindan and the second party was represented by Sri K. R. Puttaraya. The claim statement of the first party was filed on 31st December 1970, and on 22nd January 1971 the counter statement of the second party was filed. In view of the pleadings, the following additional issues were framed apart from the points of dispute on 22nd January 1971 :—

1. Whether the present dispute is an industrial dispute and this Court is competent to adjudicate upon this dispute ?

2. Whether the first party cannot be represented by the Hotel Mazdoor Sabha, Felix Pai Bazar, Mangalore, which is a general union ?

3. Whether the second party management has been pursuing coercive and other methods to expel the old workman in order to avoid payment of difference in minimum wages as per the Minimum Wages Notification and as such the first party is one of the victims of these coercive methods ?

4. Whether the domestic enquiry held against the first party on the allegation of his beating one Sri Padmanabha an apprentice on 7th May 1970 at about 12.30 P.M. while on duty during his duty hours in the establishment of the second party management, was proper and in conformity with the principles of natural justice having given full opportuity to the first party to defend his case in the domestic enquiry ?

5. Whether the charge framed against the first party is proved ?

6. Whether the second party is guilty of unfair labour practice against the first party workman ?

7. Whether the enquiry officer is a prosecutor and judge himself ? If so, what will be its effect on the domestic enquiry ?

8. What award ?

After many adjournments, on the hearing dated 3rd April 1971 the first party examined two witnesses as W.W. 1 and W.W.2 and got marked one document as Exhibit W.1. The first party closed its evidence. On that day Sri K. R. Puttaraya being not present and Sri Monappa having appeared on his behalf prayed for an adjournment, the adjournment was refused on the objection of the representative of the first party that the worker came from a distant place for the purpose of this case only. Therefore, the second party was treated *exparte* under Rule 23 of the Industrial Disputes (Mysore) Rules, 1957 on that day and the statements of W.W.1 and W.W.2 were recorded. The next date was fixed as 6th April 1971 for arguments. On 6th April 1971 Sri K. R. Puttraya for the second party filed an application to set aside the *exparte* proceeding taken against the second party on the previous hearing stating that the representative of the second party could not present himself before this Court on 3rd April 1971 as he was held up in Mysore on that day in order to attend an urgent matter in connection with a claim petition filed before the Accidents' Claims Tribunal, Mysore regarding the sudden death of his brother's only son who was tragically killed in a bus accident. Sri C. Govindhan expressed no objection in allowing this application subject to payment of costs to the witnesses. In the interest of justice *exparte* proceeding taken against the second party on 3rd April 1971 was set aside subject to payment of Rs. 10 to the first party towards costs of the previous hearing, and it was directed that the witnesses be kept present on the next hearing for cross-examination. Sri K. R. Puttaraya filed documents with a list that day. On 23rd April 1971 Sri K. R. Puttaraya stated to the Court that he does not press the additional issues 1 and 2. The witnesses W.W.1 and W.W.2 were cross-examined by the second party that day, and the first party examined one more witness as W.W.3 and closed its evidence. The second party examined five witnesses as M.W.1 to M.W.5 on the domestic enquiry as well as on merits and closed its evidence. Exhibits W.2 to W.4 were got marked by the first party, and Exhibits M.1 to M. 11 were got marked by the second party that day. On 30th April 1971 arguments of the representatives for the parties were heard.

3. The case of the first party as per the claim statement is that P. Sanjeeva, hotel worker, is a member of the Hotle Mazdoor Sabha, Mangalore. He was employed as a cleaner in the second

party restaurant since about six years. He had been discharging his duties diligently, industriously and loyally to the entire satisfaction of the management. There was not any complaint against him all these years when he was working in the said restaurant. It is stated that after the Minimum Wages Act for hotel workers came into force the second party management has been trying to oust from services several good workmen and thus has been indulging in illegal and anti-labour activities. The said management was pursuing coercive and other methods to make old workmen leave the restaurant and employment and succeeded in many cases, as most of them are illiterate and gullible. It is stated that to many gratuity in spite of good services for long years has not been paid after they are induced to leave the services of the restaurant by the second party management. It is stated that to some the balance due to them after the Minimum Wages Act came into force has not been paid even after they left the service. This year the bonus which the workers are entitled to receive under law and custom and which was being regularly paid every year from the last 15 year, has not been paid in spite of huge profits made by the second party. It is stated that P. Sanjeeva is a victim of such unscrupulous anti-labour practice of the second party management. He was not paid the arrears of wages under the Minimum Wages Act on the ground that he was a minor though he was 20 years at that time. Later on producing his birth certificate he was paid reluctantly by the management his balance of wages due to him. It is stated that in order to pursue the methods of anti-labour policy and avoid payment of Minimum wages and also to provoke old workers to acts which can be later magnified as acts of misconduct, etc., the second party management employ minors as apprentices on low wages and give them undue freedom so that they may provoke older hands employed in the restaurant and then magnify negligible quarrels to charge-sheet them and dismiss them on that ground. P. Sanjeeva is a victim of such anti-labour practice of the second party management. In para 6 it is stated that as admitted by the second party Padmanabha, a minor boy apprentice, who provoked the said P. Sanjeeva to a very minor incident, wherein he dashed against P. Sanjeeva while he was carrying plates and cups and was warned by P. Sanjeeva to be careful and not to repeat such acts of negligence as that might lead to loss of articles ending in fine to him. He has not at any time either knocked the head of Padmanabha to the wall or gripped his neck. On this minor incident which happened in an

inner room beyond the observance or hearing of the customers and which was immediately forgotten by all a major charge-sheet was created by the management. There was actually no effect on the business of the restaurant on account of this incident. To this charge P. Sanjeeva sent his explanation by registered post, but it was rejected and an enquiry was held on 27th May 1970. This enquiry was purely partial and one-sided as a lawyer trained and experienced in the labour laws favouring the management was the enquiry officer, prosecutor and judge. P. Sanjeeva is illiterate and given to stammering and in spite of requests to have outside help to which he is entitled under law and natural justice, he was denied that help and he was conveniently found guilty and dismissed from service promptly. It is stated that the termination of the services of Sri P. Sanjeeva by the second party is not only illegal and unjustified but is against natural and human justice and will amount to bad labour practice. Lastly it was prayed that the order of dismissal of P. Sanjeeva by the second party management may be held illegal and the same may be set aside and the second party may be directed to reinstate Sri P. Sanjeeva as cleaner in the restaurant with continuity of service and back wages and other amenities due to him from the date of his suspension. It was further prayed that the Court may grant such other reliefs which the Court may deem fit to grant under the circumstances of the case and that costs of these proceedings may also be awarded.

4. In the counter statement of the second party dated 22nd January 1971 it is pleaded that the Secretary of Hotel Mazdoor Sabha is not authorised to raise this so-called industrial dispute because the majority of employees of the second party or even a substantial number of the employees of the second party do not support the present dispute under reference and therefore the dispute raised by the Secretary of Hotel Mazdoor Sabha, Mangalore, is not an industrial dispute as defined under the provisions of the Industrial Disputes Act, 1947. It is further pleaded that the hotel Mazdoor Sabha is a general union and the second party management has no employees' union in their establishment and therefore Hotel Mazdoor Sabha cannot claim any representative character as far as the employees of the second party management are concerned. It is stated that however without prejudice to the above pleadings and contentions it is denied that Sri P. Sanjeeva had been discharging his duties to the entire satisfaction of the management and that there was no complaint against him while he was employed in the service of the second party management. It is stated that the claim state-

ment filed by the first party contains a series of baseless and false allegations without any relevancy to the dispute under reference and a large part of the claim statement is nothing but a long lecture made without any consideration of facts and truth on various allegations which are really irrelevant for adjudication of the dispute under reference. It is stated that this has been done deliberately with an intention of influencing the course of justice since the first party has no genuine grounds for raising this dispute. The very nature of this claim statement filed before this Court shows that instead of depending upon factual and legal defence the first party is more depending upon propaganda type of loose statements based on completely false allegations unconnected with the present dispute. It is stated that it is false for the first party to suggest that the second party management has been pursuing coercive methods to expel old workmen. There is no gratuity scheme prevailing in the second party management and the question of paying the same to their employees does not arise. The second party management has declared bonus according to the provisions of Payment of Bonus Act and this matter is now pending before the Conciliation Officer on conciliation. Hence the first party is really debarred from bringing the same matter before this Court in its claim statement under this reference. It is stated that the second party management is one among the few managements who have paid the arrears of minimum rates of wages payable to their employees after the decision of the Supreme Court in this regard but instead of appreciating this the first party has come with malicious pleadings unconnected to the main dispute in the claim statement It is stated that it is denied that minor acts of misconduct are magnified by the second party management and undue freedom is given to minor apprentices to provoke older hands in order to magnify negligible quarrels and that Sri P. Sanjeeva is a victim of such anti-labour practice of the second party management. It is stated that all the allegations made in paras 2 to 9 of the claim statement are denied therewith as the same are malicious, false, imaginary, speculative and made with an intention of making unlawful gains by creating false disputes. It is stated that the facts leading to the dismissal of Sri P. Sanjeeva are as follows : After receiving a report to the effect that on 7-5-1970 at about 12-30 P.M. while on duty during his duty hours, he had beaten one Sri Padmanabha, an apprentice undergoing his apprenticeship in the establishment of the second party management, without any provocation, catching him physically and hitting his head against the wall in the machine

chamber of the hotel by gripping his neck in his hands, the management had charge-sheeted Sri P. Sanjeeva as per their charge-sheet letter, dated 8-5-1970 issued to him Sri P. Sanjeeva submitted his explanation to the above said charge-sheet, but since the same was found to be unsatisfactory, it was decided to hold a written enquiry into the charges levelled against him. Accordingly a written enquiry was held on 27-5-1970 into the charges levelled against Sri P. Sanjeeva. In the said enquiry Sri P. Sanjeeva was given all opportunities to defend his case. He was permitted to take the assistance of one of his colleagues while conducting his defence, and he was given opportunities to bring his own witnesses and to cross-examine hotel's witnesses and the said enquiry was conducted by providing full opportunities to Sri P. Sanjeeva by following the principles of natural justice. It is stated that it is false to suggest that he was not allowed to defend his case properly. It is stated further that Sri P. Sanjeeva wanted the enquiry proceedings to be read over to him by one Sri Radhakrishna Rao, another employee working in the establishment of the second party management and accordingly Sri Radhakrishna Rao was allowed to read the enquiry proceedings which were held in Kannada to Sri P. Sanjeeva and Sri Radhakrishna Rao read to Sri P. Sanjeeva and the enquiry proceedings held on the above said date. It is stated that it is false to suggest that Sri P. Sanjeeva was not allowed to defend his case properly. Sri P. Sanjeeva did not produce his own witnesses on his behalf, nor did he give any oral statement in support of his defence. He submitted during the enquiry that he would conduct his defence himself and none of his colleagues were prepared to help him in this regard when he was told to take the assistance of one of his colleagues working at that time in the establishment of the second party management for conducting his defence during the enquiry proceedings. At the end Sri Sanjeeva did not give his oral statement, but stated that he had no witnesses to produce during the enquiry. Then he was asked to give an oral statement by the enquiry officer, but Sri P. Sanjeeva failed to give any oral statement and he submitted a written statement prepared and brought to the enquiry and requested the enquiry officer to treat the same as his evidence given during the enquiry and in the said written statement Sri P. Sanjeeva denied the charges and stated that Sri Padmanabha dashed against him with a tray and when the said tray fell down it was Sri Padmanabha who abused him, etc., but in support of his defence Sri P. Sanjeeva was not able to produce any witness.

It is stated that Sri P. Sanjeeva participated in the enquiry but he did not cross-examine the hotel's witnesses even though full opprotunities were given to him for doing so. It is stated that after the said enquiry was over the enquiry officer gave his findings holding Sri P. Sanjeeva guilty of the charges levelled against him. After considering the entire enquiry proceedings, findings of the enquiry officer and other connected papers, the second party management agreeing and concurring with the findings of the enquiry officer that from the evidence recorded during the enquiry Sri P. Sanjeeva was found guilty of the charges levelled against him, decided to dismiss Sri P. Sanjeeva from the service of the second party management since the charges levelled against him and proved against him were grave and serious in nature. Accordingly, after giving Sri P. Sanjeeva full opportunity to defend his case and after conducting a proper and legal enquiry by following the principles of natural justice and after finding Sri P. Sanjeeva guilty of the charges levelled against him, the second party management decided to dismiss him and accordingly Sri P. Sanjeeva was dismissed with effect from 30th May 1970 for committing acts of grave misconduct, *viz*., assaulting criminally inside the establishment a colleague who is a minor boy while both were on duty. It is stated that therefore the dispute raised by the first party is illegal, false and unjustified and the same may be rejected. It is stated that it is denied that the enquiry officer was a prosecutor and judge in this regard. The dismissal of Sri P. Sanjeeva is justified and legal, and he was dismissed for committing serious acts of misconduct after finding him guilty in a fairly conducted enquiry and hence he is not entitled to reinstatement in his job with continuity of service, back wages and other amenities or to any other reliefs or amenities prayed for in the claim statement. In view of these pleadings, the above mentioned additional issues were framed apart from the points of dispute on 22nd January 1971.

5. Sri C. Govindan, the learned representative for the first party, argued that the evidence of the worker indicates that there was a slight collision between the worker Padmanabha and him. But on account of the collision nothing has happened. The perusal of the charge-sheet will show that the management was bent upon to dismiss this worker before holding the domestic enquiry, and this was prejudicial to the workman which resulted in termination of his service. The worker in his explanation has requested that he may be allowed to be represented by an outsider he being handicapped being an illiterate person and given to

stammering. That request of his was refused by the management. He argued that in certain circumstances the workmen may be represented by an outsider and in this case he being handicapped on account of illiteracy and stammering the management should have given him an opportunity to be represented by an outsider. This refusal vitiates the domestic enquiry. In support of this contention of his he relied upon the ruling reported in 1965 (1)LLJ 426— A.I.R. 1965 SC 1392. He argued that in the present case there are no standing orders of the second party management preventing the second party from allowing the workman to be represented by an outsider. On account of the refusal to grant permission to him to be represented by an outsider the entire domestic enquiry proceeding becomes vitiated. That apart by refusing to give permission to the worker to be represented by an outsider the second party management has violated the principles of natural justice. He argued further that the enquiry officer has not recorded the statements in their language, for example, he has used the word 'vivarane' for report, and the word 'provocation' is used in recording the statement, but what actually Kannada word was used by the witness for provocation has not been recorded. Therefore, the report of the enquiry cannot have any evidentiary value, and hence it is liable to be thrown out of consideration. He argued that according to the version of the worker he was made to sit outside when the witnesses were being examined. He was not given opportunity to cross-examine the witnesses. This defect also goes to vitiate the domestic enquiry. The words used with reference to Radhakrishna Nallaraya having read over the statements and obtained signatures go to show that the statements are merely prepared statements. The word used is 'koolankushavagi' with reference to reading over, *i.e.*, the endorsement reads that the above statements were critically read over to Sanjeeva. But how can a hotel worker be supposed to be so well learned to use such language 'koolankushavagi' is a point for serious consideration. The use of these words suggest that the enquiry officer has embellished the statements of the witnesses by the use of words of his own choice. He argued that the second party management should have produced Radhakrishna Nallaraya to prove that he had been called to read over the statements of the witnesses to the delinquent worker, but he was not produced. Therefore, the version or stand of the management that Radhakrishna Nallaraya assisted the worker in the domestic enquiry cannot be relied upon. All the infirmities shown above go to the root of the enquiry and vitiate it. He argued that on merits also

the charge is not proved. There was no crushing of the head of the worker Padmanabha. There was only a slight collision between Sanjeeva and Padmanabha while carrying the tray which caused no damage to the second party who had premeditated to dismiss the said worker on flimsy grounds so as to get rid of the employees who were getting the minimum wages. This farce domestic enquiry had been simply arranged to be held on exaggerated facts. That being the case, the worker is entitled to be reinstated with back wages and continuity of service holding his termination of service to be quite illegal and unjustified.

6. Sri K. R. Puttaraya, the leaned representative for the second party, did not press the additional issues 1 and 2. With regard to other issues his contention is that the pleas taken by the learned representative for the first party during the course of argument are not correct and sound at all. The worker was not made a victim of either victimisation or unfair labour practice, but on the other hand his services were terminated after holding a proper domestic enquiry and in which the charge of his assaulting a co-worker by name Padmanabha was involved. He argued that the worker was given full opportunity to defend his case. The witnesses were examined in his presence as spoken to by all the witnesses M.W. 1 to M.W. 5 in the domestic enquiry. He argued that the witness W.W. 1 is a hostile witness. That was why he has been examined in the Court on behalf of the first party. He had been examined as a management witness in the domestic enquiry and on whose complaint the domestic enquiry came to be held. This witness being won over now by the first party, as is evident from his previous statement in the domestic enquiry, he has now denied the factum of assault itself. His evidence therefore cannot be relied upon. He argued that by the perusal of the charge-sheet one cannot find that the management was predetermined to dismiss the worker. The charge shows that the management was not determined to dismiss the worker. The worker did not give any explanation to the charge-sheet. He submitted his explanation only on 18th May 1970 without his signature. On his request the enquiry was adjourned to 27th May 1970. This enquiry was held in the presence of the worker and he was given assistance of a co-worker Radhakrishna Nalluraya. This is a case of assault of a co-worker. This is an act of riotious and rude behaviour and violent act while on duty, and the worker was found violent and rude during his duty hours. Therefore, the management was compelled to dismiss the worker for serious misconduct concurring with the findings of the enquiry officer. He argued

that in the claim statement so many allegations were made against the second party management as to its following coercive methods to avoid payment of minimum wages, but not a single worker was examined to prove these allegations. The evidence of the worker is a self-serving evidence; it cannot be given any weight. In the claim statement the first party has tried to show that the management is employing apprentices just only to provoke the old workers and to send them out on account of any occurences because of provocation. In para 6 of the claim statement it is stated that Padmanabha provoked Sanjeeva while he was carrying some cupes and plates, *i.e.*, Padmanabha dashed against Sanjeeva and provoked him. But in the enquiry Padmanabha gave statement supporting the charges: Here is the chief examination in Court he has denied the entire incident. This demeanour of his reflects upon his being won over by the first party to speak as such now in his favour in Court denying the incident itself. He argued that on merits also the case is proved. Krishnan Nair is an independent witness. His evidence cannot be disbelieved. He is an eye witness His evidence proves that Padmanabha was assaulted by P. Sanjeeva. The *mala fides* of the equiry officer has not been proved in this Court. Thrt apart an advcoate can be rightly appointed to hold a domestic enquiry, in view of the rulings of the Supreme Court reported in 1963 (II) LLJ 429 and 1961 (II) LLJ 417. He argued that the management *vide* Exhibit M. 9 refused to permit the worker to be represented by an outsider. But there was no request in Exhibit M. 8 that he may be permitted to be represented by any member of his union during the domestic enquiry. He argued that the management permitted the worker to take assistance from any one of his co-workers. The refusal of outsider to represent him cannot vitiate the domestic enquiry. He argued that Rathakrishna Nallurayа one of the co-workers was of his choice and he was present there throughout the enquiry to assist him to read out the statements of the witnesses to him. He argued that in the claim statement the holding of domestic enquiry was admitted but the allegation of *mala fides* was made against the enquiry officer of the management. But the enquiry officer, M.W. 2, has given his evidence that he recorded the statements of the witnesses word by word. Therefore, the use of the word 'provocation' cannot vitiate the domestic enquiry. The word 'vinakarana' is also stated along with the word 'provocation' used in the statement of Padmanabha. He lastly concluded that the reference is liable to be answered in the terms that the management was justified in terminating the services of the first party.

7. In reply Sri C. Govindan argued that Krishna Nair is an employee of the second party and his evidence cannot be taken as that of the evidence of an independent witness. As he is getting more salary, he will be deemed naturally to have interest in the second party's case. But the contention of Sri K R. Puttaraya in this respect is that the said witness is serving the second party since 17 years. He is getting Rs. 70 per month now on account of his earning yearly increments uptill now. Therefore, it cannot be said that he is not an independent witness. There is no evidence to show that on account of his giving evidence in this case in favour of the second party that his salary was raised to Rs. 70 per month.

8. I have given my anxious consideration to the able arguments advanced on either side.

9. The additional issues 1 and 2 are not pressed by the second party. That apart from the evidence of W. W. 3, Sri C. Govindan, who is the Secretary of the Hotel Mazdoor Sabha, Mangalore, it is apparent that he, *i. e.*, Sanjeeva, was dismissed by Udipi Sri Krishna Bhavan in May 1970. He orally complained to him, *i. e.*, to this witness, about his dismissal. On some day in May 1970 he had brought the dismissal notice to him and asked him to take up his case. He brought the said notice dated 30th May 1970. He had brought it on 1st June 1970 to him. Then he asked the other workmen whether they were willing to take up this case to raise an industrial dipute. Fourteen of the workmen out of 30 who were their members gave him an authorisation as per Exhibit W. 1 dated 5th Jun. 1970, to take up this dispute as an industrial dispute. On that basis a demand was placed before the management demanding reinstatement of the worker. The copy of the letter dated 12th June 1970 is marked as Exhibit W. 2. He has stated that no reply was received from the management. Then he wrote a letter to the Labour Officer on 15th June 1970 as per copy of the letter marked as Exhibit W. 3 to take up the matter with the management for conciliation. The conciliation ended in failure and hence this present reference. Thus from his evidence also it is clear that the dispute was raised by a substantial number of workmen of the second party, and that this witness was authorised to raise this industrial dispute. Hence I answer the additional issues 1 and 2 in the terms that the present dispute is an industrial dispute and this Court is competent to adjudicate upon this dispute and that the first party can be represented by the Hotel Mazdoor Sabha, Felix Pai Bazar, Mangalore, which is a general union.

10. Now I take of the additional issues 4 and 5 for consideration which are interconnected. No doubt W. W. 1 has tried to depose in Court that on 7th May 1970 there was no quarrel between him and Sanjeeva either inside or outside the hotel premises, and that he has not given any complaint to the management against Sanjeeva stating that he had beaten him. He has stated that the manager of that hotel asked him to give a complaint against Sanjeeva either oral or a writen complaint. He has stated that on 7th May, 1970 while he was coming from the main hall to the counter carrying a tray he just collided with him and looking to if it the manager asked him that he should give a complaint against him that he had beaten him. He has not given any complaint in writing against Sanjeeva as told by the manager. The manager had got something written on a paper in Kannada and he asked him to sign it. He has not read the contents but he signed it. The contents were also not read over to him by the manager. Sanjeeva was coming from the washing room with a tray. There were no customers at that place where they collided. Nothing was broken nor was there any damage. He has stated that it is not true to say that Sanjeeva had caught hold of his neck and dashed his head against the wall. He was not asked to participate in the enquiry against Sanjeeva which was help upstairs, but he was working at that time below. He does not know what sort of enquiry took place there. In cross-examination he has stated that he knows a charge-sheet was given to Sanjeeva regarding his assaulting him, but he had not assaulted him. He was informed by Sanjeeva that a charge-sheet was served on him. But he did not inform him about the charge sheet which it was served on him. He was not informed by Sanjeeva that he was charge-sheeted on account of his assulting him. Thereafter he informed him that he was charge-sheeted on the allegation of beating him. In cross-examination at poge 3 he has stated that his signature was taken on a Kannada statement when the manager was present. Sanjeeva was present and Sri K. R. Puttaraya was present. On that statement Sri K. R. Puttaraya who is conducting this enquiry on behalf of the management, obtained his signature, but that on that date he did not make any statement in Kannada before Sri K. R. Puttaraya. The manager and Sri K. R. Puttaraya both compelled him to sign that statement in spite of his refusal to sign it. He has stated that it is not true to say that Sanjeeva beat him. He identified his signature on Exhibit M. 1 marked as Exhibit M. 1 (a). The version of W. W. 1, Sri C. Padmanabha, with regard to his not having appeared in the domestic enquiry, and

Sri K. R. Puttaraya, enquiry officer, and the manager having compelled him to sign the statement, and his denial as to the factum of Sanjeeva beating him, in my view, is entirely not believable, in the face of the evidence of the enquiry officer who has examined himself as M. W. 2, and other witnsses M. W. 1, and M. W. 3 to M.W. 5, who have spoken as to the domestic enquiry being held against the delinquent worker.

11. The worker who has examined himself as W. W. 2 has tried to state that in the domestic enquiry he was not given any opportunity to cross-examine the witnesses and that the withnesses were examined in his absence when he was made to sit outside. He has deposed that he was working in Udipi Sri Krishna Bhavan, Mangalore, as a cleaner. He joined the second party hotel at the age of 14 years. He has put in seven years of service. In order to show that the second party management was cherishing illwill against him he has tried to state that when the other workers were prid the differeuce in minimum wages he also went to the office of the second pasry to receive the difference in minimum wages, but he was told that he is not entitled to the difference in minimum waes as he was underaged. He has stated that he was 20 years old when the difference in wages were paid to the other workems. He asked for the difference to the proprietor as well as to the manager. They asked him to produce a certificate to prove his age. First he produced on extract of his horoscope, but the management was not satisfied. Thien he again produced another cerificate from the head of his vitlage. With that also the second party was not satisfied and rejected it. Lastly he brought a certificate from the Secretary of the Panchayat Board. With that the management was satisfied and told him that he would be paid a portion of the minimum wages due him. That offer was rejected by him. So the management paid him the entire amount after he took Sri C. Govindan, the union Secretary. After there was an ill-feeling between him and the management. One Mr. Prabhakar Rao son-in-law of the proprietor and the manager were telling in his presence that those workmen including him who are getting minimum rate of wages should be removed from service. He has stated that there was no quarrel between him and C. Padmanabha on 7th May, 1970 at about 12-30 P M. He was just carrying a tray from the ladies room to the washing room. He had to pass through the ice machine room where ice cream is prepared. On his way Padmanabha was coming opposite to him and there was a small collision. There was no damage of any sort. Nothing was

broken. He did not catch hold of his neck and dash it against the wall. Nor has he beaten him. He has stated that he received a suspension notice from the management on 8th May 1970. He has given his explanation to the management He was asked to attend an enquiry. He asked the second party that he may be permitted to be represented through an outsider, but his request was refused. He has stated that he cannot speak properly as he is having defect of stammering. He has stated further that at the enquiry the proprietor, his son-in-law, Mr. Prabhakar and Sri. Puttaraya, the advocate, were present. The proprietor asked him why he has beaten Padmanabha and why he should not be dismissed. He denied to have beaten Padmanabha. When the management asked him whether he has to say anything he produced his copy of the explanation and that was taken by the management as his statement. He did not tender himself for examination. No other question was asked to him. He was asked to sign some paper but he requested them to read over the contents to him but they refused to read over the contents. He signed the said paper. Thereafter he received the dismissal order In cross—examination he has stated that it is true that an enquiry was held on 27th May 1970. Enquiry was conducted by Sri K. R. Puttaraya. Mr. Prabhakar Rao was present, and the proprietor was present at the enquiry. He also gave the statement. Narasimha Bhat was not present at the enquiry. Radhakrishna Nalluraya was not there. Krishna Nair was present and he gave his signature but he did not make any statement. He was not there. The boy Padmanabha Rao was inside when he was outside the room. He came to the place of the enquiry but he does not know whether he gave the statement. He was outside the office room during the enquiry. When all the others went out of the room he was called inside the room. There he was asked to sign. . He signed twice. Thereafter he was asked to go home. At the last of the enquiry he made his statement denying the charges. He has stated that the statement of his was written by Sri C. Govindan, his representative. That statement of his is Exhibit M.3 and his thumb impression is Exhibit M 3(a), The statements made by the witnesses were not read over to him. He admitted that after statement of each witness was over his thumb impression was obtained. He has stated that it is not true to say that he has beaten Padmanabha present in Court witness W.W.1, and that no quarrel occurred between him and Padmanbha on 7th May 1970 in the hotel premises of the second party. He has stated to a new question put by his representative that he did

not require Mr. Nalluraya to come and assist him. But in cross-examination he has stated that Nalluraya was called by the management. Thus from his evidence though he denied the factum of beating Padmanabha and dashing him against the wall, yet the occurence of a small collision between him and Padmanabha made is out.

12 From the statement of C. Padmanabha contained in Exhibit M. 1 proceedings of the enquiry it is apparent that on 7th May 1970 at about 12-30 p.m. he was on duty, Senjeeva was also on duty. Sanjeeva was standing near the wash basin in the hall washing his hands applying soap to his hands. At that time when he was going to take cups, Sanjeeva without any cause and provocation daub the foam of the soap on his face. He *i. e.*, Padmanabha, questioned him as to why he did so and told him that he would make a report. Then he went to the iee room saying so. Senjeeva coming to the ice room and saying "Bolimagane neenu nanna mele dooru heluthiya" (*i.e.*, you bastard's son, are you reporting against me?, gavs a slap on his left cheek and beat on his head and catching held of his neck dashed his head against the wall of the ice machine room, and challenged him to go and report the matter saying "Hogu ninna appa cashinalli kulithu kondiddane alli hogi avanalli dooru helu" (*i e*, go and tell your father who is sitting at the cash counter). He received injuries and swelling in his head. Then he reported to the cashier Narasimha Bhat. He told him to report to the proprietor. The same day afternoon he, *i.e.*, Padmanabha, reported the matter to the proprietor. When he was beaten by Sanjeeva on 7th May 1970 in the ice room Krishna Nair was present.

13. From the statement of Krishnan Nair made in the lomestic enquiry it is apparent that on 7th May 1970 Padmanabha came to the ice machine room to get ice cream for supplying. Along with him Sanjeeva was there. They were talking hotly. Then Sanjeeva caught hold of the collar of Padmanabha and beat him and dashed his head against the wall of the ice machine room by pushing him. Thus from the statement of Krishnan Nair also it is found that Sanjeeva dashed the head of Padmanabha agaist the wall of ice machine room by pushing him. Sri Krishnan Nair who has been examined as M. W 3 in this Court has also deposed to the same effect that on 7th May 1970 after 12.30 noon he was on duty. Sri Padmanabha Rao came there to take cold drinks inside the ice chamber. Sanjeeve was standing near the table and at that time they were altercating with each other *i.e*, 'pimpirying'. Then Sanjeeva caught hold of his shirt collar, and

pushed him. Therefore, his head was hit against the wall. He advised Sanjeeva not to quarrel and to go out. Both went out of the ice-chamber. He was present during the enquiry held against Sanjeeva and he gave his statement and signed it. His signature is Exhibit M. 1 (1) and the above is his statement. Exhibit M. 1 (h) is his statement. He has stated that the same facts he stated before the enquiry officer in the presence of Sanjeeva. In cross-examination he has stated that Sanjeeva caught hold of the shirt of Padmanabha and pushed him. Catching hold of his shirt he pushed him. He has no other work except ice-machine work. There was no damage of the property of the hotel and no people gathered. He was the only person present who saw this incident. In re-examination he has stated that he has no enmity with P. Sanjeeva. On being asked by the Court he has stated that they, *i.e.*, Sanjeeva and Padmanabha, were talking in an angry mood. Sanjeeva did not catch hold of the shirt of Padmanabha and push him in a friendly manner, but in an angry mood he caught hold of his shirt and pushed him to the wall which resulted in his head being hit. In view of the evidence of M.W. 3, Krishnan Nair, eye-witness, the factum of assault is proved beyond doubt even during the domestic enquiry as well as in the Court on merits. I see no reason to hold the findings of the enquiry as perverse.

14. Sri K. R. Puttaraya, M. W. 2, is the enquiry officer. He has deposed that he was appointed as an enquiry officer by the proprietor of Udipi Sri Krishna Bhavan, second party management to conduct a written enquiry into the charges levelled against one of their employees, *viz*, P. Sanjeeva. Accordingly on 27th May 1970 he conducted a wirtten enquiry into the charges levelled against Sri P. Sanjeeva as per charge-sheet letter issued to him by the second party management dated 8th May 1970. Exhibit M. 1 is the enquiry proceedings conducted on 27th May 1970 by him and recorded by him in the presence of Sri P. Sanjeeva. Sri K. Prabhakar Rao acted as hotel's represantative during the said enquiry and he placed before him all the connected papers relating to this enquiry like copy of the charge sheet, enquiry notices, explanation letter, etc., and he commenced the enquiry at about 9 a.m. on 27th May 1970 in the upstairs office of the second party management. The charge sheeted employee presented himself in time before him and he explained to him the entire procedure of the enquiry and assured him that he would be given all the opportunities to defend his case. He also made it clear to him that he could cross-exmine the witnesses of the hotel and he could also take the assis-

-tance of any one of his colleagues working in the establishment to which Sanjeeva stated that none of his colleagues were prepared to help him. Thereafter he recorded the evidence of the witnesses on behalf of the management, *viz.*, Sri Padmanabha Rao and after the completion of his evidence he asked Sri Sanjeeva to cross-examine the said witness, but Sri Sanjeeva stated that he had nothing to cross and then after signing the statement himself he asked Sri Sanjeeva to put his thumb impression or sign the statement, but he wanted that one Sri Radhakrishna Nallurayа should be called to explain him the contents of the deposition of the witness and that only then he would sign and accordingly Sri Radhakrishna Nallurayа was called in and he explained to Sanjeeva the statement in his own lanauge, and thereafter Sri P. Sanjeeva also put his thumb impression. Then one Sri Krishnan Nair was examined on behalf of the management, but Sri Sanjeeva said that he had nothing to cross Sri Krishnan Nair. Then the manager of the establishment Narasimha Bhat gave evidence in support of the charges. Finally on behalf of the management Sri S. V. Bhat, proprietor, gave his evidence. Exhibits M. 1 (a), M.1 (b), M.1 (c), M.1 (j) and M.1(k) are all the statements given by the respective witnesses on behalf of the management. But Sanjeeva did not cross examine any of the witnesses of the management even though he was given opportunities to do so. Sri Radhakrishna Nallurayа was present throughout the enquiry and explained to Sri Sanjeeva the entire proceedings of the enquiry and assisted him. At the end, when the management completed their evidence, he asked the charge-sheeted employee to produce his witnesses, to which he said that he has no witnesses to be produced. Then he asked him to give his evidence and statement, to which he stated that he had brought a written statement, and he produced the same to be taken as his written statement. Exhibit M.3 is the statement produced by him during the enquiry. Sri Sanjeeva was cross-exmined and at the end he also signed the enquiry proceedings. The entire enquiry proceedings contain 12 pages as per Exhibit M. 1, and the contets mentioned therein are wrritten by him, *i.e.*, this witness and are correct. Thereafter he gave a finding concluding that the charges levelled against Sri P. Sanjeeva were proved from the evidence recorded. He has stated that Exhibit M. 4 is his findings. He has stated that the charge levelled against Sanjeeva was that on 7th May 1970 at about 12-30 P.M. while on duty during his working hours he had beaten Sri Padmanabha who was an apprentice in the establisment undergoing his apprenticeship in the supply section without any provocation by

catching him physically and hitting his head to the wall in the ice-machine chamber of the hotel by gripping his neck in his hands. He has stated that in his findings he discussed the evidence given before him and on an appreciation of the same he came to the conclusion that the charge levelled against P. Sanjeeva was proved beyond doubt from evidence recorded at the enquiry for the reasons stated in his findings. In cross examination he has stated that the hotel representative Sri Prabhakar Rao asked the questions to the witnesses and he recorded the answers stated by the witnesses. He has stated that by the word 'vivarane' in his recording he means 'proceedings'. Whatever has been stated by them word by word has been recorded by him in Kannada. While recording the statement of Padmanabha Rao he has used a word 'Provocation' to express the statement given by Sri Padmanabha Rao to say as was said by him to the effect, that at that time when he went to bring cups, without any provocation Sri P. Sanjeeva applied soap foam, the witness had used the words ' udrekagolisuva karanavillade'. For that he used the word 'provocation' while translating it. It is to be remarked here that there is no reason to disbelieve this version of his.

15 Sri K Prabhakar Rao, M. W. 1 has corroborated the evidence of M.W. 2 as regards the enquiry being held and the witnesses being examined in the presence of the delinquent worker.

16. M.W. 4. Sri S. Narasimha that, is the manager of Udipi Sri Krishna Bhavan Restaurant, Mangalore. He has deposed with regard to Padmanabha coming to him on 7th May 1970 at about 12-30 P.M. and complaining to him orally, about Sanjeeva catching hold of his collar and neck pushing him to the wall ,as a result of which his head was hit against the wall and that he also abused him saying that "ninna appa cashinalli iddere, hogi helu". He has stated that this boy was weeping, He reported this matter to the proprietor. At about 2-30 P.M. the proprietor came and he reported the matter to him. Padmanabha Rao also told the proprietor about this. An enquiry was held into this matter. Sri K R. Puttaraya conducted the enquiry. The proprietor issued show cause notice-*cum*-charge-sheet to Sri P. Sanjeeva. He was present at the enquiry and gave evidence on behalf of the management. Exhibit M. 1 (j) is his statement and Exhibit M. 1 (m) is his signature.

17. M.W. 5 Sri S. Venkataramana Bhat, is the proprietor of Udipi Sri Krishna Bhavan Resturant in Hampankatta Mangalore. He has stated with regard to Padmanabha reporting to him about this incident, and his having issued charge-sheet-*cum*-suspension

order as per Exhibit M, 6 dated 8th May 1970 to the said delinquent worker. He has stated that he received the reply from the worker, and stated that as the explanation was not received in time he issued the notice of enquiry as per Exhibit M. 7. He appointed Sri K. R. Puttearaya as an enquiry officer to hold an enquiry into the charge against the workman. In between this period he received Exhibit M. 2 from the charge-sheeted worker. He has not signed it. He has stated that as per Exhibit M. 8 he gave another reply to the management denying the charges. After that again he gave him enquiry notice as per Exhibit M. 9 dated 22nd May 1970. Thereby he was informed that Sri K. R. Puttaraya was apointed as an enquiry officer to hold the enquiry on 27th May 1970. The enquiry was held on 27th May 1970. He has given his statement as per Exhibit M. 1(n). Exhibit M.1 (a) is his signature. He gave his statement in his, *i.e.*, Sanjeeva's presence The enquiry officer submitted his findings as per Exhibit M. 4. He considered the findings and the enquiry proceedings and agreed with the findings of the enquiry officer and thereafter he decided to dismiss him because of the gravity of the offence. Exhibit M.5 is the dismissal order dated 30th May 1970. Padmanabha Rao himself had come to him at about 2-30 P. M. on 7th May 1970, and complained to him that Sanjeeva having caught hold of his shirt pushed him. The manager had also similarly orally complained to him about this incident. Radhakrishna Nalluraya was present at the enquiry and assisted the charge-sheet employee. In cross-examination he has stated that he paid the difference in minimum wages to Sanjeeva after the Supreme Court decission was delivered. The minimum wages notification was not applicable to the minors, so he had doubt whether he deserved to receive minimum wages or not. He paid the difference in minimum wages to all the workers. The small boy Padmanabha Rao had come and complained to him weeping, so he was compelled to take disciplinary action against him. There is no reason to disbelieve this version of the witness also. Thus from the evidence discussed above, it is found that the domestic enquiry was held against the first party workman on the allegation that he beat one Padmanabha Rao, an apprentice, *i. e.*, W. W. 1, on 7th May 1970 at about 12-30 P. M. in the establishment of the second party management. and that the enquiry was properly held having given full opportunity to the first party to defend his case in the domestic enquiry. From the evidence of the second party it is also evident the Radhakrishna Nalluraya was present throughout the enquiry to read out the statements of the witnes-

ses to the worker. In view of this assistance given to him, the refusal of the second party by Exhibit M. 9. in my view, to permit him to take the help of the outsider while defending his case, cannot vitiate the domestic enquiry. Because in the said exhibit it was intimated to the worker that he may bring his own witnessess, he may cross-examine hotel witnesses, etc., and that he would be given all fair opportunities to defend his case, and that while defending his case he can take the help of any one of his colleagues working in the establishment. Hence the ruling cited on the side of the first party does not render any assistance to the first party so as to vitiate the domestic enquiry, on the ground of refusal of outside assistance to the worker during the domestic enquiry. The charge levelled against the first party is not only proved during the domestic enquiry but it is also proved beyond doubt on merits in this Court also, by the evidence of M. W. 3, the eye witness, Krishnan Nair. In the result, the additional issues 4 and 5 are answered in the terms that the domestic enquiry held against the first party on the allegation of his beating Padmanabha, apprentice, on 7th May 1970 at about 12-30 P. M. while on duty during the duty hours in the establishment of the second party management and was proper, was in conformity with the principles of natural justice, having given full opportunity to the first party workman to defend his case in the domestic enquiry, and that the charge framed against the first party is proved not only in the domestic enquiry but also on merits in this Court.

18. There is no evidence let in by the first party to prove the additional issues 3 and 6. Therefore, they are disposed of against the first party and in favour of the second party.

19. Now I advert to the additional issue No. 7. There is no evidence that the enquiry officer is a prosecutor and a judge himself in this case. This mere fact, that the enquiry Officer is an advocate and a legal practitioner, does not render him incompetent to hold a domestic enquiry, in the light of the ruling of the Supreme Court reported in 1964 (II) LLJ SC 139 (Saran Motors Private Ltd., New Delhi *v.* Vishwanath and others) wherein it is held that—

> "It is impossible to accept the contention that because a person is sometimes employed by the employer as a lawyer, he becomes incompetent to hold a domestic enquiry. It is well-known that enquiries of this type are generally conducted by the Officers of the employer and in the absence of any special individual bias attri-

butable to a particular Officer: it has never been held that the enquiry is bad just because it is conducted by an Officer of the employer. If that be so, it is obviously unsound to take the view that a lawyer, who is not a paid Officer of the employer, is incompetent to hold the enquiry, because he is the employer's lawyer and is paid remuneration for holding the enquiry".

Therefore, this additional issue No. 7 is answered in favour of the second party and against the first party that the enquiry Officer is not a prosecutor and the Judge in this case, and that the enquiry Officer being a legal practitioner does not affect the domestic enquiry proceedings.

20- In view of the findings on the additional issues 3 to 7, the points of dispute 1 and 2 are answered in the terms that the management of Udipi Sri Krishna Bhavan, Mangalore, was justified in terminating the services of Sri P. Sanjeeva with effect from 30th May 1970, and that the first party workman Sri P. Sanjeeva, is not entitled to the relief of reinstatement with continuity of service and back wages or to any other relief.

21. Now remains the additional issue No. 8 as to 'what award. In view of the findings on the additional issues 3 to 7 and the points of dispute 1 and 2, I make the following award :—

AWARD

The reference is answered in the terms that the management of Udipi Sri Krishna Bhavan, Mangalore, was justified in terminating the services of Sri P. Sanjeeva, with effect from 30th May 1970, and that the said workman is not entitled to the relief of reinstatement with continuity of service and back wages or to any other relief. In the circumstances of this case, the parties are directed to bear their respective costs of this reference.

Mangalore,
Dated 11th May 1971.

MOHD. HAMEEDUDDIN KHAN,
Presiding Officer,
Labour Court, Mangalore.